IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15787 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LALBHAI KASAMBHAI MANSURI

Versus

DEPUTY COLLECTOR

Appearance:

1. Special Civil Application No. 15787 of 2004

MR DIPAK R DAVE for Petitioner No. 1

Mr. MR Mengdey, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 18/12/2004

ORAL JUDGEMENT

Rule. Shri MR Mengdey, learned AGP waives service of Rule on behalf of the respondents. With the consent of parties, the matter is taken up for final hearing today.

2. In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the

legality and validity of the orders passed by the respondents No. 1 and 2 dated 26.12.2002 and 10.11.2004 respectively and also the notice of attachment dated 16.9.2004. By order dated 26.12.2002 the respondent No.1 in exercise of powers under Section 32-A of the Bombay Stamp Act, 1958 {"the Act" for short} passed an order directing the petitioner to pay an amount of RS. 84380 by way of deficit stamp duty and Rs. 250 by way of penalty. Being aggrieved and dissatisfied with the same, the petitioner preferred an appeal before the Chief Controlling Revenue Authority under Section 32-B of the Bombay Stamp Act. However, there was a delay in preferring the said appeal and an applicatin for condonation of delay was submitted. By impugned order dated 10.11.2004 the appeal came to be dismissed on the ground that the said appeal is not filed within the period of limitation. Shri Dipak Dave, learned advocate appearing on behalf of the petitioner has submitted that even the order passed by the Deputy Collector, Stamp Duty Valuation, and Deputy Superintendent of Stamps, dated 26.12.2002 and 10.11.2004 are without giving an opportunity of being heard and the same are passed in violation of principles of natural justice. The appellate authority ought to have condoned the delay and entertained the appeal and ought to have decided the same on merits. It is further submitted that in fact before dismissing the appeal on the ground of delay no opportunity of being heard was given to the petitioner by the appellate authority.

3. Shri Mengdey, ld. AGP appears on behalf of the respondents. It is not disputed that before passing the impugned order dated 26.12.2002 and 10.11.2004 by the respondents No. 1 and 2 the petitioner was not given an opportunity of being heard. It is also not in dispute that before passing the said order dated 10.11.2004 by the appellate authority dismissing the appeal on the ground of delay, no opportunity of hearing was given to the petitioner and the appeal has been dismissed by the appellate authority only on the ground of delay.

4. Under the circumstances, the impugned order passed by the appellate authority dated 10.11.2004 dismissing the appeal of the petitioner on the ground of delay is hereby quashed and set aside. The matter is remanded to the Chief Controlling Revenue Authority for passing a fresh order in accordance with law and on merits after giving an opportunity of hearing to the petitioner. It will be open for the petitioner to explain to the appellate authority the cause for the delay and the same may be considered by the appellate

authority in accordance with law and on merits while considering the question of delay. Rule is made absolute with no order as to costs.

[M.R. Shah, J.]
rmr.